

REMARKS

Claims 22 through 45 are in the case.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 22-30 and 39-45, drawn to a fastening pin, classified in class 411.
- II. Claims 31-38, drawn to a fastening pin in combination with a threshold cover, classified in class 52.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the pin could have different flexible projections. The subcombination has separate utility such as for use with elements other than a threshold cover.

Applicant respectfully traverses the restriction requirement. All claims are directed to a fastening pin.

Applicant elects claims 22 to 30 and 39 to 45 of Group I. for prosecution on the merits.

The examiner has required restriction between combination and subcombination inventions. Where applicant elects a subcombination, and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a

continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Restriction for examination purposes as indicated is proper because all these inventions listed in this action are independent or distinct for the reasons given above and there would be a serious search and examination burden if restriction were not required because one or more of the following reasons apply:

- (a) the inventions have acquired a separate status in the art in view of their different classification;
- (b) the inventions have acquired a separate status in the art due to their recognized divergent subject matter;
- (c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries);
- (d) the prior art applicable to one invention would not likely be applicable to another invention;
- (e) the inventions are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

AQpplicant respectfully submits that the constructions of the fastening pin in claims 22 to 30, 39 to 45 and 31 38 are closely related.

Applicant is advised that the reply to this requirement to be complete must include

- (i) an election of a invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.**

Applicant elects claims 22 to 30 and 39 to 45 of Group I. for prosecution on the merits with traverse.

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention.

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Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

This application contains claims directed to the following patentably distinct species. There are two species elections required. First with respect to the configuration of the fins applicant is required to elect one of following species: species A, Figs. 1; species B, Figs. 2; species C, Fig. 3; species D, Fig. 4, 5. Second with respect to the flexible head configuration applicant is required to elect one of the following species: species 1, Figs. 1-6A; species 2, Fig. 7; species 3, Fig. 8-9; species 4, Fig. 10-11; species 5, Fig. 12-13; species 6, Figs. 14-15; species 7, Fig. 17; species 8, Fig. 19 and species 9, Fig. 20. The species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of

such species. In addition, these species are not obvious variants of each other based on the current record.

Applicant elects species C, Fig. 3 of the fins for prosecution on the merits. Fig. 3 does not show any fins (16). The claims which do not require fins (16) are claims 22 to 30 and 43 through 45.

Applicant elects species 8, Fig. 19 of the flexible head configuration for prosecution on the merits. Fig. 19 shows a head (4). Claims 39 to 45 claim the presence of a head (4). No claim is directed to a flexible head.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

Applicant elects species C, Fig. 3 of the fins for prosecution on the merits. Fig. 3 does not show any fins (16).

Applicant elects species 8, Fig. 19 of the flexible head configuration for prosecution on the merits.

There is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Applicant is advised that the reply to this requirement to be complete must include
(i) an election of a species to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected species, including
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any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Applicant elects species C, Fig. 3 of the fins for prosecution on the merits. Fig. 3 does not show any fins (16). The claims which do not require fins (16) are claims 22 to 30 and 43 through 45.

Applicant elects species 8, Fig. 19 of the flexible head configuration for prosecution on the merits. Fig. 19 shows a head (4). Claims 39 to 45 claim the presence of a head (4). No claim is directed to a flexible head.

The election of the species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the election of species requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected species.

Applicant does not traverse the election of species as long as upon finding of patentable subject matter with the elected species also other species will be considered.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the species unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other species.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

Applicant must elect a group, a species of the letter type and a species of the number type such as: "group I, species A and 1".

Applicant elects "group I, species C and 8".

Reconsideration of all outstanding rejections is respectfully requested.

Respectfully submitted,
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